IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4319 OF 2004

Dilip Kamat .. Applicant

Versus

State of Maharashtra & Ors. .. Respondents.

Applicant in person.

Mr.Raja Thakare with Mr.Chimalkar for respondents

Mr.S.D.Shinde, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 30th January 2006.

P.C.

. This is an application for bail. It invokes section 21(4) of Maharashtra Control of

Organised Crime Act, 1999. (MCOCA for short). Applicant is original accused No.44 in C.R.No.135 of 2002 registered with Bundgarden Police Station, Pune for offences punishable under sections 120-B, 256, 257, 258, 259, 263(A), 467, 468, 471, 472, 473, 474, 475, 476, read with 34, 109, 216, 218, 221, 403 of I.P.C., read with 3(1)(11), 3(2), 3(4), 3(5), 4, 24 of MCOCA read with 63(b) Bombay Stamp Act, read with 13(1)(d) of Prevention of Corruption Act. This C.R. has led to registration of Special Case No.2 of 2003 before the Special Judge under MCOCA at Pune.

2. Applicant applied for bail by instituting criminal application No.15 of 2003 before the Special Judge which has been rejected vide order dated 9th October 2003. The present application is filed requesting this Court to release the applicant on bail in the aforesaid special case.

3. Applicant has argued his case in person.

Mr.Raja Thakre represented respondents.

4. Section 21(4) of MCOCA reads thus:-

> "21(1) ......
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> "21(2) ......
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> "21(3) ......
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> "21(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless --
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> (a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and
>
> (b) where the Public Prosecutor

> opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

It is in the backdrop of this legal provision that the present application will have be considered, since the belief and satisfaction of this Court envisaged by section 21 is of the above nature viz., whether the applicant is guilty of offences punishable under MCOCA or not and whether he is likely to commit any offence while on bail. It is therefore, necessary to set out facts and submissions in somewhat details.

5. Prosecution case is that the aforesaid C.R. was registered on a complaint lodged by Police Inspector of Bundgarden police station on

7th June 2002. Complaint followed interception of an Indica car bearing Registration No.MH-04-AY-200 near Pune Railway Station. Interception had led to recovery of fake stamps worth Rs.2,98,692/- from the car. Names and other details of its occupants are set out in the charge sheet. Investigation of this case was conducted by P.I. Prakash Deshmukh of Bundgarden police station. It is further alleged that three persons came to be arrested and against them C.R.No.135 of 2002 was registered for offences punishable as alleged. Initially officers of Bundgarden Police station started investigation on the basis of F.I.R. lodged as above. However, subsequently, this investigation was transferred to Special Investigation Team (SIT) and during the course of the same, applicant came to be arrested.

6. As far as the allegations against present applicant are concerned, they are that, main

accused (Kingpin - Abdul Karim latsaab Telgi) and the members of the organised crime syndicate had indulged in acts of violence, intimidation and coercion and other unlawful means for pecuniary benefits or other advantages to Kingpin and members of his organised crime syndicate. It is alleged that one Christopher, a member of the organised crime syndicate, working at Chennai office was done to death at Mumbai over financial disputes of the organised crime syndicate. It is alleged that while continuing these unlawful activities, it was also necessary to ensure that the Organised Crime Syndicate was given the necessary protection and immunity from legal punishment and with that objective in mind AKL Telgi (A-23) developed contacts with politicians and public servants and went to the extent of sharing the booty from out of the ill-gotten gains of the Organised Crime Syndicate.

7. During the period Telgi was in Central

Prison, Bangalore, the present case came to be detected and registered. The members of his Organised Crime Syndicate tried to sabotage the investigation, which is evident by the fact that Manoj Ramesh Mehta (A-43) was camping in Pune in Hotel Pride on 7th June 2002 and Telgi had sent Rs.5 lakhs through Tabrez Ahmed Abdul Rahim Telgi (A-64) to Manoj Ramesh Mehta who was the mediator and who had even on previous occasions acted as such. Though the case came to be registered on 7th June 2002, with a view to sabotage the investigation an officer closely associated with the investigation viz., ACP Mohd. Chand Mulani (A-61) was subverted through Abdul Rashid S Kulkarni (A-49), and was paid an amount of Rs.15 lakhs as illegal gratification. Similarly, huge amounts were paid to scuttle the investigation in Mumbai cases against the members of the Organised Crime Syndicate through Dilip P. Kamath (A-14), applicant, as elaborated in the charge sheet. Also in a case registered in the year 1999 at

P.S. Meera Road, Vide C.R.No.274 of 99 an amount of Rs.50,000/- was paid through Pratap Kakade (since deceased) to subvert the police officers and scuttle the investigation and though the investigating team could discover the printing press from where the counterfeit Govt.Stamps and Stamp Papers were being printed it did not take any measures to seize or seal the press. Similarly, on 20th May 2002 an amount of Rs.15 lakhs was arranged to be paid through Kadarsha Mohd.Singoti (A-8) by Telgi to Vashishta Rambhau Andhale for ensuring that no legal action whatsoever is initiated against the members of the organised crime syndicate, who had infact been found with Counterfeit Govt.Stamps and Stamp Papers.

8. As a part of conspiracy, Mohd.Chand Mulani was not promptly neutralised, coupled with interrogation of Telgi A-23 to the exclusion of other senior officers of Pune police. This is

the basis of the charge against the superior officials including Mr.R.S.Sharma. Mr.R.S.Sharma, took charge as Commissioner of police, Mumbai in January 2003 with full knowledge of the immense activities of the Organised Crime Syndicate of Telgi. His failure to ensure immediate neutralisation of Dilip Kamath, an officer closely associated with the investigation of various cases against Telgi and the members of the Organised Crime Syndicate even after the input received from S.K.Jaiswal DIG Pune and ADG Srikumar of STAMPIT, Bangalore, points towards his subversion by the organised crime syndicate, as his actions exhibit the help and support to the Organised Crime Syndicate rendered by Ranjitsingh Brahmajitsingh Sharma through Dilip Pandurang Kamath for ensuring the continuing unlawful activities.

9. The participation of S.S.Wagal, the then Jt.C.P. (Crime) Mumbai in rendering help and

support to the organised crime syndicate of Telgi through the active abatement of other officers like the then D.C.P. Pradeep Sawant, the then Sr.P.I.Dattatray Dal, through API Dilip Pandurang Kamat has well surfaced during the course of investigation in as much as 7 cases relating to counterfeit Government stamps and stamp papers were directed to be transferred to crime branch Unit V Dharavi through Pradeep Sawant where Dattatray Dal was the Senior P.I. and Dilip Pandurang Kamath who was virtually a member of the organised crime syndicate of Telgi was actually handling his custody. From time to time huge amounts were collected by Dilip Kamath from the members of the organised crime syndicate and evidence has also been collected to show the payment thereof to Shridhar Wagal. The aforementioned officers were also parties to the criminal conspiracy of rendering help and support to the organised crime syndicate of Telgi and saving him from legal punishment. With the said

objective they falsified the official records and though there was a haul of 830 Crores worth counterfeit Govt. Stamps and Stamp papers, which were having the same origin as that of the present case and which were recovered at the instance of Telgi on 11th/12th January 2003 from Vanmala Compound godown at Bhiwandi, the said recovery was however shown at the instance of Shabbir Ahmed Mushtaq Ahmed Shaikh and that too in C.R.No.73 of 2002, which was a non Telgi gang viz., Nandesh Kadwadkar Gang as elaborated in the charge sheet.

10. The case, in respect of C.R.No.73 of 2002 of Unit V Dharavi, was lodged right since inception with deliberate motives. The initial seizure was of counterfeit Govt.Stamps and Stamp Papers of the Nandesh Kadwadkar Gang which to the knowledge of the crime branch was unconnected with the organised crime syndicate of Telgi, yet, when the seizure at Hyderabad of counterfeit

Govt.Stamps and Stamp Papers was made from the rebel members of the organised crime syndicate, with due deliberation, the seizure was dumped in this C.R. as if it was a part of this case, to the knowledge of both Pradeep Balchandra Sawant and Shridhar Wagal. The fact about this knowledge is evident from the press note dated 4th September 2002 issued by Pradeep Sawant and recovered from the personal diary of Shridhar Wagal. When viewed from this background, the basis on which the seizure of Rs.830 Crores worth of Counterfeit Govt.Stamps and Stamp papers was clubbed together with this C.R. is not at all comprehensible and the only possible conclusion which can be drawn is that the intention was to sabotage the case itself, so that the continuing unlawful activities of the organised crime syndicate can go on unabatedly. The report of the expert of ISP, Nashik evidences that the samples of the Counterfeit Govt.Stamps and Stamp papers from the seizure at Hyderabad matched with

the samples of the seizure at Bhiwandi and incidently both these samples match with the samples in the present case, whilst the samples of the initial seizure from Nandesh Kadwadkar Gang do not in any way match with both these seizures.

11. During the period that Telgi was in custody of Unit -V Dharavi after being brought from Central Prison Bangalore all the facilities were provided to him with the active abatement and connivance of aforementioned police officers to obtain mobile phones through witness Kiran Thakker and such mobile phones and SIM cards could be identified during the investigation to have been acquired by Telgi for his own use and the use of the members of the organised crime syndicate. Thus, Telgi was provided the facility of free communication with the other members of the organised crime syndicate so that the continuing unlawful activities could flourish

unabated even during the time that he was in police custody. This facility was provided despite the fact that a case had been registered at the Madiwala P.S. Bangalore vide C.R.No.1100 of 2002 when Telgi was apprehended freely communicating over the mobile phones from the Central prison Bangalore with the active aid and assistance of the Jail authorities, who are also co-accused in the said case.

12. Thus, for all practical purposes relating to the present case, it is evident that the kingpin Telgi entered into criminal conspiracy at Pune, Mumbai and adjoining areas in the State of Maharashtra and even extended to other states viz., Karnataka, Andhra Pradesh, New Delhi etc. to commit various illegal acts with the members of the organised crime syndicate from the year 1994 and continued his activities inspite of registration of various cases and even after his arrest the activities continued atleast till

January 2003.

13. It is further alleged that applicant, A.P.I. posted at Crime Branch Dharavi Unit V, Mumbai being a public servant, rendered help or support in the commission of organised crime as defined in clause 2(c) of MCOCA, inasmuch as these unlawful activities of the organised crime syndicate were continuing but applicant deliberately abstained from taking lawful measures against them. In the application itself, applicant has set out the allegations against him as not just abstinence from taking lawful measures but also being part of the organised crime syndicate.

14. Further, applicant’s role is that while posted as above, he prepared record of investigation in such a manner which he knew to be incorrect and which would likely save the accused persons and other members of the

syndicate from legal punishment and hence committed offence under section 218 of I.P.C.

15. It is alleged that various acts of omission and commission were committed by applicant inasmuch as in a case registered against one Tabrej Rahim Telgi and Jamir Gulab Samadi vide C.R.No.78 of 1998 at Crime Branch Mumbai in which investigations were carried on by the applicant under the supervision of his superiors and when seizure of counterfeit Government stamps worth Rs.3,27,150/- made therein, he wilfully and intentionally did not complete the same but diverted the track towards one non existing person viz., Murugan. This, despite, the statement recorded of one Samadi during the course of investigation that counterfeit Government stamps and stamp papers seized in the case were stored at Shalimar Complex, Colaba, Mumbai in the office of Metro Corporation owned by Abdul Karim Telgi.

Applicant made no efforts of whatsoever nature in this direction and this deliberate omission was to protect Telgi.

16. It is also alleged that the said Telgi established contacts with applicant to such an extent that although, he was wanted offender in several cases registered at various police stations, applicant wilfully and intentionally knowing the complicity of Telgi therein, did not take any legal action against him. Applicant has also assisted Telgi by recording the statement of one Madhav Devadiga and thereafter allowed him to go free. In other words, instead of conducting proper and logical investigations and recording statements in pursuance thereof, applicant recorded statement of Devadiga in a manner, dictated by said Telgi. Applicant was aware of Telgi’s activities in December 1998 but failed to take lawful action against him. It is also alleged that when the case at Bundgarden police

station was registered, applicant became aware of the arrest of Telgi by Bangalore police station in November 2001 and also his involvement in the murder case investigated by crime branch, yet, the applicant decided to take advantage and establish contact with Telgi and one Abdul Rashid Kulkarni, Advocate of Telgi on 21st July 2002. Both applicant and Advocate Kulkarni travelled to Bangalore by Air where they were joined by one Kishore Dhingra. The said Dhingra is informant of present applicant. All three of them unauthorisedly met Telgi at Central Prison and secret discussion was held with him. Further allegation is that on 28th July 2002 the applicant along with Kishor Dhingra went to Bangalore and stayed at Hotel Monarch and on the same day, they met Telgi, who gave certain information regarding stock of counterfeit stamp in the possession of one Raees Khan at Hyderabad.

17. It is further alleged that on 29th July

2002, as a part of the criminal conspiracy, the applicant went to Hyderabad from Bangalore and stayed at Hotel Golkonda. On the same day, the applicant telephonically contacted Unit In Charge of Crime Branch, Dharavi Unit Mumbai and requested to send some more staff at Hyderabad. Accordingly, on 29th July 2002, one officer and a constable were sent to Hyderabad from Mumbai by Air and joined the applicant and also three head constables of the same unit were sent to Hyderabad by Bus.

18. It is also alleged that the applicant contacted Abdul Wahid Abdul Karim Patvegar at Hyderabad with a view to trace Raees Khan, who could not be found. However, one Sayyad Hamid Habib Sayyad, who was a friend of Raees Khan was traced. This said Sayyad Hamid led the above police party to the residence of Raees Khan at Banjara Hills, Hyderabad. When they conducted the search at his place, they found ten bags of

counterfeit stamps and stamp papers, which were seized. Thereafter the said Sayyad Hamid, applicant and Kishor Dhingra who acted as panch witnesses, returned to Mumbai by Air from Hyderabad. It is further alleged that incorrect records were framed in this regard.

19. It is alleged that the applicant and Kishor Dhingra while reaching Mumbai met other officers and staff at Vashi toll naka and out of the said 10 bags, took charge of four bags containing counterfeit Government stamps and Stamp papers of higher denomination and kept in their car. The remaining six bags were sent to Crime branch, Dharavi Unit. It is further alleged that the applicant prepared a panchanama showing that the said six bags containing counterfeit stamps worth Rs.3,67,78,567/- have been seized. It is further alleged that the applicant took charge of other four bags, which stamp papers and stamps are believed to be

destroyed or sold in the market.

20. It is then alleged that on 30th July 2002, applicant arrested one Sayed Habib Hamid Sayed, who had been brought from Hyderabad in C.R.No.73 of 2002 and obtained his police custody remand. During this period, applicant took Sayed unauthorisedly to Hyderabad on 8th August 2002 accompanied by informant and one head constable and stayed together with them at Hotel Golkonda at Hyderabad. Applicant accepted illegal gratification of Rs.8.30 lakhs from wife of said Sayed with a promise of not taking further lawful measures against him. Similarly, applicant along with said Kishore Dhingra and two head constables unauthorisedly went to Hyderabad by Air to trace another accused Raees Khan and stayed at a Hotel. Said Raees Khan was traced on 27th October 2002 and the applicant along with said Dhingra and two head constables returned to Mumbai by Air. Ticket for Raees Khan was purchased in fictitious

name of Salim.

21. On 27th October 2002, prime accused Abdul Karim Telgi was brought to Mumbai by Bangalore Jail authorities for production before local court at Mumbai. It is alleged that applicant and Kishore Dhingra received Telgi and Escort party at V.T. Station and brought them to Hotel Raj Hans at Chambur. Hotel premises were booked by Kishore Dhingra on 28th October 2002. Applicant then released Raees Khan after directing him to bring Rs.7 lakhs as illegal gratification. Amount was actually accepted by applicant in instalments. Because of this payment he avoided arrest of Raees Khan and set him free. Thus, by avoiding taking lawful action, applicant abused his post as public servant. Said Raees Khan is now absconding.

22. C.R.No.382 of 1995 was registered at Cuffe Parade police station and investigation was

handed over to the applicant. On 25th November 2002, applicant arrested Abdul Karim Telgi and after completion of police custody remand the said accused applied for bail before Magistrate. Although notice was issued of this application and the applicant was directed to produce case diary on 11th December 2002, neither the said diary was produced nor did the applicant as I.O. remained present before the Court. It was not brought to the notice of the court that Abdul Karim Telgi was proclaimed offender in some cases from 1996. Evidence collected during the course of investigation was not placed for consideration of the court while the court considered bail application of Telgi. Thus, applicant facilitated accused Telgi in getting bail in this case.

23. A serious allegation against the applicant is that on 9th January 2003 when the Additional Director General of Police, Bangalore

along with S.I.T. officer, D.I.G. Jaiswal and other officers of the SIT visited residence of Telgi at Mumbai they were surprised to find Telgi there along with three policemen of crime branch Mumbai. All signs of regular habitation were noticed at the said place. The team forwarded its report to the concerned authorities of Mumbai Police. To cover up his misdeeds, on 11th January 2003, applicant and unit in charge of crime branch Dattatray Dal, at the instance of Telgi called one Maqsood and Sirajuddin Nasipudi and along with them they visited a godown at Vanmala compound at Bhivandi. These persons pointed out the said godown containing counterfeit stamps and stamp papers worth more than Rs.8 crores. Prompt recovery was done for protecting applicant from departmental enquiry arising out of report of D.I.G., S.I.T. dated 10th January 2003. Although such seizure was made of the counterfeit stamps as above, applicant and the said Dal deliberately and

intentionally, in order to save prime accused Telgi from the case and to shield members of the organised crime syndicate showed seizure at the instance of Shabir Shaikh. Story narrated in the panchanama is by recording the statement of the said Shaikh to this effect that the stamp selling business was between him and Ram Ratan Soni. Applicant made station diary arrest of Shabir Shaikh on 12th January 2003 in C.R.73 of 2002, which was being investigated by some other officer. Applicant is also charged with preparing fabricated panchanama of the seizure on 12th January 2003, which is signed by him, although superior officer Mr.Dal was present during the course of seizure.

24. It is alleged that applicant received a total amount of Rs.96.5 lakhs as illegal gratification, which sum is other than his legal remuneration and obtained from the said Telgi and his organised crime syndicate. Applicant has

thus abused his position as public servant by corrupt or illegal means. Applicant is also charged with receiving further sums of Rs.33 lakhs and of also misappropriating to himself an amount of Rs.1.50 lakhs recovered allegedly during the course of investigation.

25. Applicant is thus charged with helping and assisting the said Telgi and his organised crime syndicate. Although, Telgi was in police custody of crime branch from 28th October 2002 to 21st January 2003 he was never physically kept in police lock up but lodged at hotel Ashray at Sion, Mumbai and at his residence at Cuffe Parade Mumbai. The said accused was using mobile phone and his unlawful activities continued. Applicant has also assisted the said Telgi in disposing of the chemical plant situate at Turbhe.

26. Applicant has also assisted Telgi by taking him to his native place on 12th November

2002 by road. They stayed at Belgaum and Goa by giving fictitious names. Applicant along with his family members were lodged at Hotel Leela, a five Star hotel at Goa from 14th to 15th November 2002 and bills amounting to Rs.52,600/- were paid by said Telgi. Thereafter, applicant along with Telgi travelled to Mumbai by Jet Air and airtickets were obtained from amounts paid by Telgi. It is alleged that applicant along with others have spent almost Rs.2 lakhs on air fares from July to November 2002, which have been allegedly paid by organised crime syndicate.

27. One Khalid Abdul Sattar was arrested by Dharavi crime branch. From one handwritten notebook seized from him, there is an entry of payment of Rs.50,000/- by Telgi to applicant on 4th April 2002 as illegal gratification for protecting crime syndicate and its members from legal action.

28. On the above allegations, applicant came to be arrested on 13th June 2003. He was produced before the Special Judge, Pune and initially remanded to police custody and now stands remanded to judicial custody.

29. Applicant appearing in person urges that it is inconceivable that he met prime accused Telgi in Bangalore Jail on 21st and 28th July 2002. He states that duty chart maintained at Dharavi crime branch shows that on the relevant dates applicant was in Mumbai. He states that this fact is known to investigating machinery and therefore in the supplementary charge sheet filed on 29th December 2003, there is an improvement in the allegation. However, for the purpose of evidentiary value, station diary and case diary stands on higher footing and in that behalf, he places reliance upon section 35 of the Evidence Act. He states that oral statements of witnesses recorded during the Course of investigation by

SIT cannot substitute entries in the station diary. These statements have no evidentiary value. As far as entry on 28th July 2002 is concerned, case diary shows that applicant along with staff of department had been to Hyderabad for seizure of stamps. This falsifies the case that applicant went to Bangalore. This case diary is written by I.O., A.P.I. Agarkar. As far as visit to Khanapur with Telgi is concerned, applicant submits that he visited the said place after seeking permission from his superiors and as part of his duty. He states that a statement recorded during the course of investigation corroborates this fact. He states that there is a recovery of car which was taken to Khanapur and in that behalf he relies upon a statement of one Padval. He submits that nephew of Telgi was driving the car at Khanapur and Police Inspector Bane had seen it and this car was seized during the investigation.

30. As far as allegations that applicant had shown favours to prime accused by allowing him a comfortable stay at his own residence, applicant submits that a trap was laid for arresting accused Tabrej Telgi. Applicant states that the said Tabrej Telgi was at that time, as informed, residing at the Cuffe Parade flat. A trap was laid for his arrest and that is how applicant went to the said flat and was found therein. Report of S.I.T. is malicious because D.I.G. Jaiswal was aware of this fact. Applicant in that behalf relies upon the allegations made against accused No.50 (Senior P.I. Mr.Dal). He states that Dal has been released on bail by trial court on identical allegations. No application is made by prosecution for cancellation of that bail. Once Dal, superior of applicant, has been released on bail on self-same allegations, then on ground of parity even the applicant is entitled to bail. He invites my attention to submissions of Mr.Dal in his

application for bail and the response thereto of the prosecution. He relies upon a statement of P.S.I. Bhosale. He submits that this is not a first trap and on earlier occasions his superior Dal has arranged an identical trap. Applicant submits that his intentions were not malicious at all inasmuch as, if the intent was not to proceed in accordance with law, then applicant would not have maintained station diary. He submits that when fake stamps worth Rs.8.30 Crores were seized from Shabir Ahmed on 13th January 2003, he was not there. In any event, facilities extended to Telgi and other accused are as per orders of court. That apart, some times it is necessary to give some comfort to the accused so as to facilitate investigation and maintain secrecy. In any event, every act or omission, if not punishable by law, does not amount to an offence and at the most such lapse on the part of applicant could be subject matter of departmental proceedings.

31. Applicant further contends that the allegations as far as assisting prime accused in getting bail is totally baseless and unfounded inasmuch as bail order is granted by the Court after perusing the materials and not because of absence or otherwise of the I.O. That apart, prime accused faces about six cases. Applicant was I.O. in only two out of these six cases. In other cases, Investigating officers are different viz., Mane, Agarkar and Bhosale. Despite production of police diary and other records in other cases and the I.O. remaining present, prime accused has been enlarged on bail. Therefore, this cannot be a basis for alleging serious offences punishable under MCOCA. Provisions of MCOCA cannot be applied on this basis at all.

32. His next contention was that the allegations insofar as preparation of false

record is also without substance, inasmuch as C.R.No.73 of 2002 is registered at Mumbai. It is independent of Pune case. It is not clear when the fabrication of records was done and in which case the same has taken place. As far as C.R.73 of 2002 is concerned, statement of I.O. is on record (page 206). Applicant is not I.O. in this case. Mr.Agarkar is concerned I.O. He has signed the statement. Yet, he falsely alleges that he was unaware about investigations carried out by the applicant. Applicant recovered counterfeit stamps and stamp papers worth crores of rupees. Police custody remand application insofar as case where the seizure took place has been signed by I.O. Police Inspector Agarkar. He states that under section 172 of Cr.P.C., case diary is admissible in evidence. He also invites my attention to the remand application and states that custody for interrogation of Shabbir Shaikh has been granted by the Court. In any event, if the case is handled by Mr.Agarkar, then he should

have also been arrayed as accused. He has not been arrayed and only the applicant is falsely involved. In any event, he submits that the version has been changing from time to time. It is only after the SIT pressurised the co-officers of the applicant that version as stated in the charge sheet has come on record. He submits that departmental enquiry was conducted but there is no complaint against the applicant. He also contends that all officers of the department named in the C.R. are like accomplices and their statements cannot be accepted, much less, after inordinate delay and after arrest of applicant. This delay is fatal. He also relies upon a report of one Ankush Shinde who was conducting an enquiry into the acts of omission and commission on the part of applicant and other officers. Mr.Shinde has exonerated applicant of all charges levelled in the present charge sheet and this report is suppressed by the prosecution. Applicant was at pains in pointing out that the

Senior P.I. is the superior officer of applicant. The superior officer Mr.Dal has been enlarged on bail. Applicant is not solely responsible for keeping the prime accused in the Unit office or lodging him in a hotel. All instructions to do so came from the Commissioner of Police. Station diary is also maintained. He relies upon the statement of one P.S.I., Bhosale and contends that Mr.Dal was in charge of police station and he is solely responsible. Applicant is only an officer working under him and under his supervision. He contends that the order passed sanctioning prosecution is composite. The applicant is not arrested in connection with C.R.No.73 of 2002 but C.R.No.135/02. If MCOCA has to be applied on the basis of the distinct C.R., then it must be shown that insofar as allegations under that C.R. are concerned, they are serious enough to apply the provisions of MCOCA otherwise in the said C.R. (135/2002) MCOCA cannot be applied on the basis of lapse,

acts of omission and commission in a distinct C.R. More so, when the other case was handled by different officers viz., Mr.Agarkar and Mr.Dal. He submits that the documents do not support the version that it is the applicant who was responsible for lodging of the prime accused at Hotel Ashray at Sion and statement of the hotel manager cannot be relied upon in isolation to bring home the charge. He also invites my attention to C.R.73 of 2002 and states that the said matter is pending before regular court in Mumbai. Charge sheet has been filed after investigations are complete therein. Allegations in the subject C.R. are that lapses and acts of omission and commission have been committed by applicant during the course of investigation in C.R.No.73 of 2002. He submits that the special court in the case of C.R.No.73 of 2002 is a court of special Judge at Mumbai and Court of Special Judge, MCOCA at Pune would have no jurisdiction in law to try the C.R.No.73 of 2002 which is

sought to be done indirectly in this case.

33. As far as other allegations are concerned, he contends that he is accused in C.R.No.78 of 1998 which is registered at Crime Branch Dharavi unit. That is for counterfeit stamp and stamp papers and self-same allegations are included in the present charge sheet i.e. charge sheet in C.R.No.135 of 2002. Hence, the principle of double jeopardy would apply.

34. Finally, the applicant contends that sections 23 and 24 of MCOCA would have an important bearing in this case. He submits that FIR in C.R.No.135 of 2002 is not registered under MCOCA but under section 154 of Cr.P.C. The I.O. in charge of Bundgarden police station is one P.I. Deshmukh. MCOCA was earlier applied to only two accused and subsequently it has been applied to other accused. He submits that this decision was taken by the authorities at the

behest of some external source or authority. He relies upon the fax of D.I.G. law and order in this behalf.

35. According to applicant, assuming without admitting, that any offence is committed, in this case, it would be only of the nature, viz., failure to dischare duty. That would at the most attract section 24 of MCOCA. He submits that there is nothing to show that applicant held Telgi in printing or circulating counterfeit stamps. On the contrary, he took legal action against him. He investigated murder case, seized and recovered motor car. Proposal was initiated at the applicant's instance to apply MCOCA to the prime accused. Custody of Telgi was obtained in October 2002. Applicant recovered Rs.3.07 Crores worth counterfeit stamps from the associate of prime accused and thereafter effected recovery of stamps worth Rs.830 Crores. He traced eye witness in the murder case against Telgi. Thus,

the applicant is an officer who has caused maximum loss to Telgi and therefore even section 24 cannot be invoked. Assuming it can be so invoked, maximum punishment, therefor, is three years. Appplicant is arrested and has spent about 2 and half years already in custody. Therefore, this is a fit case where he should be enlarged on bail. More so, when there are no chances of tampering with witnesses. Applicant is under suspension. He is permanent resident of Mumbai. He is salaried employee and there are no chances of his further committing crime. He is not hardcore criminal. On the contrary, he is a family man and is required to attend to his ailing daughter.

36. Applicant relies upon the following judgements and decisions amongst others in support of the above submissions.

(a) Ranjitsing Brahmajeetsing Sharma

Vs. State of Maharashtra & Anr. (2005 SCC (Cri) 1057);

(b) Anirudsinhji Karansinhji Jadeja and Anr. Vs. State of Gujarat (A.I.R. 1995 S.C. 2390)

37. On the other hand Mr.Thakare, learned Special Counsel appearing for respondent, Central Bureau of Investigation submits that if the present application is to be decided in the light of section 21(4) of MCOCA, then, it is clear that applicant is guilty of offences punishable under this Act, inasmuch as from the statements recorded, materials collected and evidence gathered at the prima facie stage, it is clear that applicant is part of organised crime syndicate. He has, for pecuniary benefits and advantages, assisted the said syndicate in its unlawful and illegal activities. It cannot be

said that the applicant has been arrayed as an accused only because of his role as a public servant. On the other hand, materials collected would show that the applicant had actively participated in the activities of the organised crime syndicate and virtually became a part of the same. Once he became such a part, he abdicated his duties as a police officer and instead of arresting crime, he let off the members of the said syndicate including prime accused so that their activities can continue unabated and uninterfered. These are indeed serious charges and if the materials demonstrate prima facie that applicant is involved in the acts alleged then it will not be proper and in public interest to enlarge the applicant on bail.

38. He submits that neither grounds of parity nor inaction by investigating machinery in some case can be a ground to release the applicant on bail. He submits that ultimately the case of

each applicant has to be considered independently and unless the court records its satisfaction and belief envisaged by section 21(4) of MCOCA, qua each accused, the ground of parity cannot be applied. He submits that what the applicant is really invoking is the principle of equality and non-discrimination. However, such principles do not have a negative shade, inasmuch as two wrongs do not make one right. Therefore, neither the stand of prosecution in the case of co-accused nor the order passed by the court in their case may be of any assistance to the applicant. He, therefore, submits that this application be rejected as independent prima facie case of a strong nature is made out against the applicant.

39. Mr.Thakare emphasises applicant's role in the entire crime by inviting my attention to the following features. He contends that the knowledge of applicant about activities of prime accused being involved in counterfeit Govt.stamps

and fake stamp papers racket will be gathered from registration of Case No.78 of 1998. This was in respect of raid carried out at Shalimar complex on 16th/17th December 1998. He invites my attention to the charge sheet in this behalf. He submits that the applicant is the I.O. in this case as also member of raiding party. One Tabrej Telgi and Jameer Sanadi were arrested in this case. On the date of their arrest, Telgi was also called to the office of the Unit at Dharavi and was kept separately from Jamir and Tabrej. During this period, Telgi was declared as proclaimed offender. In that behalf, Mr.Thakare places reliance on confessional statement of Jamir and Tabrez. He places strong reliance on statement of Kumar Hirappa Sawant, Prakash Jagtap, D.P. Shinde and other police personnel. He submits that although applicant was aware of the role of Telgi, the investigations were prolonged deliberately for more than three years. This was purportedly on

statement of Telgi that the concerned person is Murgod. This person is none other than prime accused Telgi because when Telgi was arrested in this case, the applicant recorded his statement where he stated that he is Murgod. Applicant is not just acquainted but known to Telgi and this is corroborated from telephone diary maintained by Rashna, P.A. of Telgi. This telephone diary contained mobile, residence and office telephone numbers of applicant. These numbers have been confirmed by a departmental letter as well. Similarly, from the charge sheet, it is clear that one Khalid paid Rs.50,000/- to the applicant which he received on 4th April 2002.

40. Mr.Thakare submits that Bund Garden case was registered on 7th July 2002. Wireless message in that behalf is received by Mr.S.S.Wagal, Joint Commissioner of Police (Crime), Mumbai from Additional Commissioner of Police Pune on 1st July 2002 seeking details of

other cases registered against Telgi by Mumbai police. Significantly, Mr.Thakare submits that in second week of July 2002, a sum of Rs.5 lakhs was received by the applicant as gift at hotel Avishkar from Rashid Kulkarni. In that behalf, he relies upon the statement of Kishore Dhingra. He submits that C.R.No.68 of 2002 which was registered with regard to the counterfeit Government stamps and fake stamp papers came to be transferred to Crime Branch on 6th July 2002. On 10th July 2002 a memo was issued by Senior P.I.Dal to P.I. Mane, I.O. in that case to the effect that applicant should be closely associated with the investigations in C.R.No.68 of 2002. On 21st July 2002, applicant flies to Bangalore and was joined by Dhingra who comes from Delhi. They were received by Rashid Kulkarni at Bangalore. However, applicant's presence is shown in the order book at Dharavi Unit as present on duty. This despite the station diary entry reflects that message was

received that he was at Bangalore. Order book is signed by P.I. Dal. In that behalf, he relies upon statement of Kishore Dhingra, Order book and station diary. Mr.Thakare submits that applicant's involvement with the activities of the organised crime syndicate and his association with the same is also corroborated by the fact that he informed Kishore Dhingra that prime accused Telgi wants P.I. Zahid's transfer as he is an obstacle in his way. This led to the co-accused Kulkarni filing a complaint on 25th July 2002 against Zahid and on the same date order of transfer of the said Zahid is passed.

41. Mr.Thakare then elaborated applicant's day to day participation in the activities inasmuch as under the garb of some investigation or report, applicant went to Bangalore and Hyderabad. However, entire recoveries effected have not been shown in the records and details of stamp papers worth crores of rupees seized and

recovered have not been entered in the records so as to assist the members of the crime syndicate. This aspect is further demonstrated by Mr.Thakare by inviting my attention to the fact that Raees Khan and Hameed Sayeed were not at all cooperating with the prime accused Telgi and they appropriated to themselves the part of consignment delivered by Telgi. He submits that the recovery effected at Hyderabad although worth crores of rupees was not made part of any separate case but to show as recovery in C.R. 73 of 2002 which was registered on 17th July 2002 against one Nandesh Kadwadkar and others. These persons are not members of the organised crime syndicate of Telgi. This was done by the applicant to protect Telgi. Mr.Thakare was at pains in pointing out that the samples which were recovered at Hyderabad were despatched to Indian Security Press Nashik for their opinion and for a comparative study with the recoveries effected in Bund Garden case. The opinion received is that

the samples of recovery at Hyderabad matched with Bund Garden case. Recoveries effected from search and seizure of premises of Nandesh Kadwadkar do not match with Bund Garden seizure. He invites my attention to a press note dated 4th September 2002 which re-inforces the submissions. Mr.Thakare submits that in the press note it is clearly stated that Hameed Sayeed is member of Nandesh Kadwadkar Gang and counterfeit stamps worth Rs.3,67,78,567/- were seized from Hameed at Hyderabad. There is no panchanama of this seizure drawn at Hyderabad.

42. Mr.Thakare submits that the said Hameed Sayeed was brought from Hyderabad to Mumbai with seizure on 28th July 2002 but his arrest was shown on 30th July 2002. Police custody remand was obtained for 14 days. During the period of police custody remand without taking permission of the court, Hameed Sayeed was taken to Hyderabad by air along with Kishore Dhingra and

one Head Constable. They stayed at hotel Golkonda. Applicant extorted a sum of Rs.8.20 lakhs from the wife of Hameed Sayeed in lieu of not taking further action against him. In these events, the main role is played by applicant. He submits that on 27th October 2002, applicant along with Kishore Dhingra again went to Hyderabad to arrest one Raees Khan. He was brought to Mumbai on 28th October 2002 by air by entering his false name in the records as S. Salim. If he was apprehended at Hyderabad because of his alleged involvement in serious crime, he ought to have been arrested after he was brought to Mumbai. However, instead of arresting him the applicant negotiated with him and he is allowed to go away on assurances and promise of payment of Rs.7 lakhs to applicant. Said Raees Khan paid Rs.1.5 lakhs personally and an amount of Rs.3.5 lakhs was paid to him through one Noor Mohammed at a subsequent stage. Thereafter, in the last week of November 2002

balance sum of Rs.2 lakhs was paid. For supporting this submission, reliance is placed by Mr.Thakare on the statements of Raees Khan and the allegations in the charge sheet in that behalf. As far as prime accused Telgi is concerned, he was brought to Mumbai from Bangalore on 28th October 2002 although he was received by the applicant and Kishore Dhingra at Mumbai C.S.T. along with escort party, the prime accused was not taken to police station but he as well as escort party were lodged in a hotel in rooms booked by Dhingra in his name. They stayed at hotel Ashray. This fact is corroborated by Dhingra, hotel register and hotel manager. On 29th October 2002, Telgi is produced for remand in C.R. No.68 of 2002 and police custody is obtained till 11th October 2002. However, during police custody remand on 28th October 2002, Telgi is taken to Sunny House premises by applicant where his presence was noted by Secretary of Housing Society one Ramesh Chandramani. Despite

obtaining police custody remand from 28th October 2002 to 5th December 2002, rooms were booked at Hotel Ashray in the name of Dhingra, Rashid Kulkarni etc. Telgi used to reside there. Applicant would visit him daily. However, in the relevant station diary an entry is made that the prime accused was in custody of the applicant during this period. The prime accused Telgi was provided with several facilities including mobile phones and SIM cards by the applicant. In C.R.No.78 of 1998 also applicant obtained custody of Telgi and during the police custody remand, he obtained permission of A.C.P. Padwal to take Telgi to Bangalore for investigation in C.R.No.68 of 2002. However, instead of taking him to Bangalore, applicant took said Telgi to his residence (prime accused) at Khanapur and from their to Goa. Applicant also went to Goa along with him. They resided separately inasmuch as while applicant resided at Hotel Leela Palace with his family, prime accused was at Resort Dona

Sylvia. In this behalf, he relies upon the statement of Kishore Dhingra, hotel register extracts, statement of D.I.G. Mr.Auradkar, Pramod Bhosale, Atyalkar. Mr.Thakare submits that the modus operandi adopted was during the course of investigation, search, seizure and recovery would be effected and panchanama would be drawn. However, even panchanamas were not recorded faithfully and honestly. Counterfeit stamps and stamp papers seized would then be shown as being seized and recovered at the instance of Telgi. This was to justify the travel from Mumbai to all these places.

43. He submits that action of putting the prime accused in police custody was just an eye wash because unlawful activities of organised crime syndicate continued. The favours that were shown by the applicant were then narrated by Mr.Thakare and he points out that a sum of Rs.50 lakhs was arranged by Telgi for being paid to

several officers in the crime branch Unit V. The favours shown by the officers including the applicant would result in the members of the organised crime syndicate freely communicating with each other. Their alleged detention thus never hampered their activities. He points out instances where Telgi was assisted in disposing of some of his properties and the active role played and assistance rendered by the applicant therein. These properties in fact were liable for attachment under penal laws. They have been acquired from the funds generated by the organised crime syndicate, yet, they were not proceeded with in accordance with law. In the same manner, police officers like applicant were ignoring the duties prescribed in law. They were not attending courts when bail applications moved by prime accused Telgi were taken up. They were not apprehending other persons involved and these acts cannot be just termed as dereliction in duty.

44. A facade was made by the applicant of being a high profile officer who was working round the clock. An arranged seizure was effected at Bhivandi. Godown was pointed out by prime accused Telgi. Seizure was shown at the instance of one Shabbir Shaikh. For supporting this contention reliance is placed upon statements of Poojari, Mansoor Khan, Chandrakant Bhoir and disclosure cum seizure memo of Shabbir Shaikh. Thus, this was an independent seizure and subject matter of independent case but it was shown as part of investigation in C.R.No.73 of 2002 which was registered against Nandesh Kadwadkar gang. Prior to this seizure, there were three C.Rs. registered against Shabbir and Telgi but Crime Branch took a view that Shabbir has no relation with Telgi but part of Ram Ratan Soni gang. This was for protection of Telgi and benefiting the applicant. Before Press, however, different version was adopted and the members of

media were informed that stamps worth Rs.8.30 crores were seized from godown at Bhiwandi belonging to Telgi. This should have been borne out from the records and documents but the seizure documents do not reflect Telgi's involvement therein. The prime accused Telgi and others were present at the seizure site and this is corroborated by statements of Masood Khan, Anand Kotian apart from K.K.Pujari but they have not been involved in this case despite this seizure. Thus, serious allegations have been made by the prosecution against the applicant and those are based upon statements of not just police officers but persons involved including members of crime syndicate. They corroborate, prima facie, the fact that the applicant has committed acts which are punishable under MCOCA and the applicant's submission that they are mere acts of omission and lapses during the course of duty which need to be dealt with departmentally is wholly misconceived and untenable. The

applicant, instead of discharging his duties as police officer becomes part of the organised crime syndicate and committed offences which have adversely affected public interest and shaken faith of public at large in the authenticity of stamp papers issued by the Government. The prime accused was counterfeiting stamps through his outlets and premises in Mumbai and elsewhere and this was to the knowledge of police officers like the applicant and, therefore, this is not a fit case for enlarging applicant on bail.

45. Mr.Thakare, distinguishes judgements relied upon by applicant including the judgement reported in the case of R.S.Sharma Vs. State. He submits that insofar as these decisions are concerned, including some rendered in the case of co-accused, cannot be applied as precedent mechanically and peculiar facts and circumstances of this case would definitely be a distinguishing factor.

46. He submits that even applying the principles laid down in the decision of R.S.Sharma by the Supreme Court, it is clear that applicant was providing help and rendering assistance actively to the organised syndicate in lieu of pecuniary advantages and benefits to himself and thereby renders himself liable for punishment of offences under MCOCA. Far from being innocent, he is guilty of serious offences and the application, therefore, deserves to be dismissed. In his turn Mr.Thakare relies upon orders passed by this Court in case of other accused involved in the same C.R. and contends that in their cases, applying the tests laid down by the Suprme Court, this Court has rejected their application. In that behalf, he relies upon the orders of this Court (Hon'ble Justice Oka, J) passed in the case of Mohammed Chand Mulani Vs. Union of India (Cri.Application No.3885 of 2004) decided on 19th 20th October

2005 and in the case of Chenna Boyanna Krishna Yadav Vs. State of Maharashtra (Criminal Application No.4853 of 2004) decided on September 19, 2005.

47. With the assistance of the applicant and Mr.Thakare, I have perused the relevant material including statements and the charge sheet. The Supreme Court in the case of Ranjitsinh Sharma (supra) has observed thus:-

> "21. MCOCA was enacted to make special provisions for prevention and control of, and for coping with, criminal activity by organised crime syndicate or gang, and for matters connected therewith or incidental thereto. The Statement of Objects and Reasons for enacting the said Act is as under:-
>
> " Organised crime has for quite

some years now come up as a very serious threat to our society. It knows no national boundaries and is fuelled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering etc. The illegal wealth and black money generated by the organised crime being very huge, it has had serious adverse effect on our economy. It was seen that the organised criminal syndicates made a common cause with terrorist gangs and foster terrorism which extend beyond the national boundaries. There was reason to believe that organised criminal gangs have been operating in the State and, thus, there was immediate need to curb their activities.

It was also noticed that the organised criminals have been making extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission would be an indispensable aid to law enforcement and the administration of justice.

2. The existing legal framework i.e. the penal and procedural laws and the adjudicatory system were found to be rather inadequate to curb or control the menace of organised crime. Government, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of

the organised crime.

It is the purpose of this Act to achieve these objects."

22. The interpretation clause as regards the expression "abet" does not refer to the definition of abetment as contained in Section 107 IPC. It refers to such meaning which can be attributed to it in the general sense with grammatical variations and cognate expressions. However, having regard to the cognate meaning, the term may be read in the light of the definition of these words under Sections 107 and 108 of the Indian Penal Code. The inclusive definition although expansive in nature, "communication" or "association" must be read to mean such communication or association which is in aid of or renders

assistance in the commission of organised crime. In our considered opinion, any communication or association which has no nexus with the commission of organised crime, would not come within the purview thereof. It must mean assistance to organised crime or organised crime syndicate or to a person involved in either of them. It, however, includes (a) communication, or (b) association with any person with the actual knowledge, or (c) having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate. Communication to, or association with, any person by itself, as was contended by Mr Sharan, would not, in our considered opinion, come within the meaning of the aforementioned provision. The communication or association must relate to a person.

Such communication or association to the person must be with the actual knowledge or having reason to believe that he is engaged in assisting in any manner an organised crime syndicate. Thus, the offence under Section 3(2) of MCOCA must have a direct nexus with the offence committed by an organised crime syndicate. Such abetment of commission of offence must be by way of accessories before the commission of an offence. An offence may be committed by a public servant by reason of acts of omission and commission which would amount to tampering with the investigation or to help an accused. Such an act would make him an accessory after the commission of the offence. It is interesting to note that whereas Section 3(2) having regard to the definition of the term "abet" refers directly to commission of an

offence or assisting in any manner an organised crime syndicate, Section 24 postulates a situation where a public servant renders any help or support both before or after the commission of an offence by a member of an organised crime syndicate or abstains from taking lawful measures under this Act.

23. Interpretation clauses contained in Sections 2(d), 2(e) and 2(f) are interrelated. An "organised crime syndicate" refers to an "organised crime" which in turn refers to "continuing unlawful activity". As at present advised, it may not be necessary for us to consider as to whether the words "or other unlawful means" contained in Section 2(e) should be read "ejusdem generis"/ "noscitur a sociis" with the words (i) violence, (ii) threat of

violence, (iii) intimidation, or (iv) coercion. We may, however, notice that the word "violence" has been used only in Sections 146 and 153-A of the Indian Penal Code. The word "intimidation" alone has not been used therein but only Section 506 occurring in Chapter XXII thereof refers to "criminal intimidation". The word "coercion" finds place only in the Contract Act. If the words "unlawful means" are to be widely construed as including any or other unlawful means, having regard to the provisions contained in Sections 400, 401 and 413 IPC relating to commission of offences of cheating or criminal breach of trust, the provisions of the said Act can be applied, which prima facie, does not appear to have been intended by Parliament.

24. The Statement of Objects and Reasons clearly states as to why the said Act had to be enacted. Thus, it will be safe to presume that the expression "any unlawful means" must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control. In other words, an offence falling within the definition of organised crime and committed by an organised crime syndicate is the offence contemplated by the Statement of Objects and Reasons. They are offences and offences under the Indian Penal Code and other penal statutes providing for punishment of three years or more and in relation to such offences more than one charge-sheet may be filed. As we have indicated hereinbefore, only because a person cheats or commits a criminal breach of trust, more than once, the same

by itself may not be sufficient to attract the provisions of MCOCA. Furthermore, mens rea is a necessary ingredient for commission of a crime under MCOCA.

32. Section 24 of MCOCA must be given a proper meaning. A public servant can be said to have committed an offence within the meaning of the said provision if he (i) renders any help or support in any manner in the commission of an organised crime, (ii) whether before or after the commission of an offence by a member of an organised crime syndicate, or (iii) abstains from taking lawful measures under this Act, or (iv) intentionally avoids to carry out the directions of any court or of the superior police officers in this respect.

33. The purported acts of omission and commission on the part of the appellant do not attract the first part of Section 24 of MCOCA. It is not the contention of the respondents that he has committed any act which comes within the purview of clauses (iii) and (iv) hereinbefore. The provisions of MCOCA, as for example, Section 20, cast a duty upon the persons concerned to see that properties of a member of the organised crime syndicate are attached. In view of Section 4, it also becomes the duty of the persons connected with the investigation of crime to see that persons, who are in possession of movable or immovable property which cannot be satisfactorily accounted for are brought to book.

38. We are furthermore of the opinion

that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probabilities he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the court is to

see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.

42. The provisions of the said Act, therefore, must receive a strict construction so as to pass the test of reasonableness.

43. Section 21(4) of MCOCA does not make any distinction between an offence which entails punishment of life imprisonment and an imprisonment for a year or two. It does not provide that even in case a person remains behind the bars for a period exceeding three years, although his involvement may be in terms of Section 24 of the Act, the court is prohibited to enlarge him on bail. Each case, therefore, must be considered on its own facts. The question as to whether he is involved in the commission of organised crime or abetment thereof must be judged objectively. Only because

some allegations have been made against a high-ranking officer, which cannot be brushed aside, may not by itself be sufficient to continue to keep him behind the bars although on an objective consideration the court may come to the conclusion that the evidences against him are not such as would lead to his conviction. In case of circumstantial evidence like the present one, not only culpability or mens rea of the accused should be prima facie established, the court must also consider the question as to whether the circumstantial evidence is such whereby all the links in the chain are complete.

44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for

bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not

any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the Court at this

stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgement of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."

48. Applying the tests and principles laid down therein for the reasons indicated hereinbelow, in my view, it is not possible to accept the contentions of the applicant that he is not guilty of offences alleged against him and, therefore, be enlarged on bail. His prima facie involvement in the subject offences registered at Bund Garden police station is clear from the following facts and circumstances.

49. Applicant does not dispute that he was I.O. in case No.78 of 1998. He is not disputing that Zamir Sanadi and Tabrej Telgi are arrested in this case. He also does not dispute that the Bund Garden police case was registered with the allegations, referred to in details, above. Applicant does not dispute that C.R.No.68 of 2002 was transferred to crime branch on 6th July 2002.

Applicant is associated with the investigations of this case as well. He does not dispute that he visited Bangalore, Khanapur etc. However, he disputes dates of such visits. Applicant does not dispute search and seizure operations at Hyderabad and is familiar with the names of persons who have been apprehended during the course of the same. In fact, during the course of detailed submissions made orally as well as in writing applicant himself refers to seizures and recoveries as also arrests in false stamp case.

50. Applicant also does not dispute that information was being received by him from one Kishore Dhingra.

51. From a perusal of the statements of Sanadi, Kumar Virappa Sawant, Prakash Rajaram Jagtap, it is clear that the applicant was involved with the investigation pertaining to fake stamps. During the course of said

investigations, applicant according to statements recorded, instead of performing his duties and functions in accordance with law and booking the culprits and restrict their unlawful activities assisted them and more so, by not apprehending the prime accused. Prime accused was allowed to virtually get away and the applicant played a major role in the prime accused staying away from the clutches of investigating machinery.

52. This aspect is prima facie reflected from the statements which were brought to my notice including that of Kisore Dhingra. He has elaborately stated about facilities and concessions that were extended to the prime accused. It is not at this stage to decide as to how and in what manner this evidence has to be appraised and appreciated so also its credibility in law. Suffice it to state that at this stage, it cannot be said that there is nothing on record which would involve the applicant not only in the

acts of omission or commission on his part as a police officer but also as a person actively assisting and/or abetting the unlawful activities of the organised crime syndicate. In every such case, depending upon the materials, it can always be stated that by not proceeding against the prime accused expeditiously the activities would go on unchecked and undisturbed. In the instant case, it is not as if the applicant is unaware of the cases arising out of fake stamps and stamp papers. Once he is part of a unit which is investigating such offences then, it is expected of officers like applicant to take timely action in such a serious case so that activities of the crime syndicate are checked and further damaged prevented.

53. In the instant case what appears from the statements and materials produced is that the applicant despite being aware of case after case against the crime syndicate has not acted

diligently, apart from honestly by apprehending the prime accused and there is further material to show prima facie that this was done intentionally and in lieu of pecuniary advantages or benefits to the applicant. It is not only persons such as informant Kishore Dhingra but others including officers in the department who have deposed about the role of the applicant and I cannot discard that material as is suggested by the applicant.

54. The advantaes gained, pecuniary and otherwise, by the applicant due to his closeness and proximity to the prime accused are, prima facie, demonstrated in this case. The organised crime syndicate was during the course of its unlawful and illegal activities actively assisted by the applicant is the charge. He does not come on the scene after the activities are detected but is in know of things throughout.

55. Applicant's contentions about acceptability of the statements of witnesses recorded under section 164 of Cr.P.C. and judgements brought to my notice by him on this aspect do not have any application at this stage. I cannot go into evidentiary value of the materials relied upon. Documents including extracts from hotel registers and case and station diaries at this prima facie stage point towards the applicant and it would be open for him at the stage of trial to demonstrate that these documents are not at all genuine or otherwise vitiated and cannot be read in evidence. It is not the case of the applicant that documents are not made available. Therefore, I refrain from expressing any opinion on the contents of the said documents or the submissions of the applicant based upon their admissibility.

56. Applicant cannot also make much capital

of the fact that one or two of his colleagues including superiors have been enlarged on bail and their applications were either not contested or opposed right upto Supreme Court by C.B.I. I have decided this application in the light of the role attributed to the applicant and by perusing the materials produced to substantiate the same. Once, there is a specific role attributed to the applicant and somewhat distinct from his other colleagues, then principle of parity can have no application. Even otherwise as far as mandate of section 21(4) is concerned that satisfaction and belief of the court must be qua each applicant and it cannot be contended that general observations made while deciding bail applications of other accused can be of assistance. Therefore, applicant's superior Mr.Dal being enlarged on bail is an aspect which also would not carry or advance case of applicant any further.

57. Thus, pertaining to each fact and circumstance there are prima facie materials placed on record. As observed above, at this stage it is difficult to brush aside the allegations and record a finding as suggested by the applicant that there is no reason to believe that the applicant is guilty of the charges levelled against him and, therefore, deserves to be enlarged on bail.

58. For the reasons recorded above, it is prima facie clear that apart from failing to discharge his duties as public servant, the applicant is prima facie guilty of actively supporting and assisting the organised crime syndicate and the prime accused Telgi. He has received pecuniary benefits. He has shown concessions and given facilities to the prime accused in return of several favours. He has prima facie, by not following up the matter even after arresting prime accused committed an offence under section

3(2) of MCOCA. That is the sum and substance of the allegations and statements in the affidavit in reply filed by CBI which are substantiated during the course of the submissions. In the light of the above, application is dismissed.

(S.C.DHARMADHIKARI, J)